IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7816 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SWAMINARAYAN RICE & PULSE MILLS

Versus

INCOME TAX OFFICER

Appearance:
MR KA PUJ for Petitioner
NOTICE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

Date of decision: 08/03/99

ORAL JUDGEMENT(Per J.N.Bhatt, J.)

By this petition under Article 226 of the Constitution of India, the petitioner has questioned the legality and validity of show cause notice issued by the respondent authority under section 148 of the Income-tax Act, 1961 (IT Act, for short), inter alia, contending that it is

illegal and contrary to the provisions of the law.

The respondent authority has not filed affidavit in reply. At the stage of final hearing, learned counsel for the petitioner drew our attention to a decision of the Hon'ble Apex Court in Commissioner of Income-tax v. P.J.Chemicals Ltd., 210 ITR 830 in support of his submissions.

A few relevant material facts, in order to appreciate the merits of this petition, may be narrated, at this stage.

The petitioner was a partnership firm carrying on its business at Vithal Vidyanagar. The petitioner firm had filed its return for income-tax for the assessment year 1984-85 on 17.9.84 declaring the total income at Rs.46035/-. In the balance-sheet the petitioner had shown on the liability side an amount of Rs.48467/- against subsidy account. The assessment order was passed under section 143(1) of the IT Act on 7.8.85 accepting the return filed by the petitioner.

Respondent No.1, six years after the assessment order came to be passed, issued notice under section 148 of the IT Act on 25.7.91 contending that he has reason to believe that income for the year 1984-85 has escaped assessment, within the meaning of section 147 of the IT Act, which is, precisely and directly, in challenge before us in this petition.

One of the contentions raised by the petitioner is that reassessment of the assessment sought to be made is beyond the period of limitation as the show cause notice is not issued within the statutory period of 4 years under section 148 of the IT Act. It is also contended that the sanction for issuance of notice as envisaged by section 151 of the IT Act was not given and notice on this count is also required to be quashed.

Our attention was also drawn to the correspondence exchanged between the Audit Department and the respondent authority, whereby, it was proposed to satisfy that even the respondent authority had taken a stand before the Audit Department that the amount of subsidy is not a revenue receipt. It is clear from the notice produced at Annexure 'G' dated 23.5.90 that the assessee during the financial year relevant to assessment year 1987-88 had also shown a liability in balance sheet on account of subsidy of Rs.48463/-. The Audit party raised objection that subsidy is not a refundable amount and so it cannot be a liability and therefore the entry on the liability

side was not correct. It was also pointed out by the Audit that the amount of subsidy should be treated as a revenue receipt and since it was not done so under the assessment to the extent of Rs.48463/- with short levy of tax in relation to the assessment year 1987-88, the respondent authority was advised to take note and further action, pursuant to which the impugned show cause notice came to be issued, after detailed correspondence between the Audit and the respondent authority.

In Commissioner of Income-tax v. P.J.Chemicals Ltd., (supra), it has been, clearly, held that where the Government subsidy is intended as an incentive to promote the industries and to encourage entrepreneurs to move to backward areas for the establishment of industries, fixed percentage of capital or financing cost which is the basis for determining the subsidy being only a measure adopted under the scheme to quantify the financial entitlement could not be tantamount to payment directly or indirectly to satisfy the expression "actual cost" . It was, therefore, held that the expression 'actual cost' occurring in section 43(1) of the IT Act should be interpreted liberally so as to advance the true spirit and scheme of subsidy and the resultant financial aid to the entrepreneur cannot partake the colour of actual cost and therefore it cannot be be termed as revenue receipt. It was further held that the amount of subsidy, therefore, could not be deducted from the actual cost under section 43(1) in relation to the calculation of the depreciation. The subsidy is nothing but an amount or money given to the party by way of grant by the Government for promotion of the industries which are considered beneficial for the larger public interest. This Court in C.I.T. vs. Grace Papers Industries Pvt. Ltd, 183 ITR 591 (Guj) had taken the same view which is, obviously, found approved and confirmed by the Hon'ble Apex Court in C.I.T. v. P.J.Chemicals Ltd.

In view of the aforesaid decisions, both the points which are raised in the show cause notice which is challenged before us are evidently answered. Therefore, the view taken by the respondent authority based upon the objections of the audit department which entailed the issuance of the impugned show cause notice under section 148 of the IT Act is not sustainable. With the result, the impugned show cause notice at Annexure C deserves to be quashed. Accordingly, the petition is allowed. Rule is made absolutely to the aforesaid extent. However, the parties are left to bear their own costs.

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